

State of California  
Regional Water Quality Control Board  
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT  
June 10, 2004

ITEM: 11-H

SUBJECT: Administrative Assessment for Civil Liability against SAN MARCOS 54 LLC/ SAN MARCOS TRACT 419 (discharger) for Non-Payment of fiscal year 2003 construction storm water annual fees in violation of California Water Code section 13260. The Regional Board will decide on an order assessing liability. (Tentative Order No. R9-2004-0219) (*Vicente Rodriguez*)

PURPOSE: The Regional Board will decide on the allegation of failure to pay annual fee and whether to adopt an order that assess civil liability.

PUBLIC NOTICE: A public notice was posted on the Regional Board web page on May 5, 2004 and published in the Orange County Register and the San Diego Union-Tribune on May 7, 2004 and in the Riverside Press Enterprise on May 8, 2004. The written comment period ended on June 2, 2004, and the oral comment period ends at the June 10, 2004 Regional Board hearing.

DISCUSSION: On April 23, 2004, the Executive Officer issued Complaint Order No. R9-2004-0147 for Administrative Assessment for Civil Liability against the discharger for failure to pay the fiscal year 2003 construction storm water annual fee in violation of California Water Code section 13260. The discharger failed to: 1) respond to the original invoice issued by the State Water Resources Control Board (State Board) in November 2003, 2) the Demand Letter issued in January 2004, and 3) the Notice of Violation issued in February 2004.

The Discharger listed below did not submit a signed waiver of right to a hearing.

Agency and Facility Name: SAN MARCOS 54 LLC/ SAN  
MARCOS TRACT 419

Site Location: MISSION RD BT LIBERTY & COMET  
SAN MARCOS, CA

WDID No: S9 37C319236

COMPLIANCE HISTORY

**To be provided with the supplemental mailing.**

This discharger has not submitted any written comments at the time of the first mailing (May 27, 2004). The written comment period ends with the supplemental mailing (June 2, 2004).

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Tentative Order No. R9-2004-0219 (**To be provided with the supplemental mailing**)
2. Complaint Order No. R9-2004-0147

RECOMMENDATION: Adopt Tentative ACL Order No. R9-2004-0219.

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Tentative Order No. R9-2004-0219  
will be provided with the supplemental mailing.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN DIEGO REGION**

In the Matter of	)	Complaint No. R9-2004-0147
	)	For
Ron Portaro	)	Administrative Civil Liability
San Marcos 54 LLC	)	
6108 Iron Kettle St	)	\$1,310
Las Vegas, NV 89130	)	
_____	)	Failure to Pay Annual Fees

**San Marcos Tract 419 IS HEREBY GIVEN NOTICE THAT:**

1. San Marcos 54 LLC (discharger) owns/operates San Marcos Tract 419 located at Mission Rd Bt Liberty & Comet in San Marcos. San Marcos Tract 419 is regulated by State Water Resources Control Board Order No. 97-03-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Industrial Activities excluding Construction Activities (General Permit). The waste discharger identification number for the facility is S9 37C319236.

**ALLEGATION**

2. The Discharger is alleged to have violated Section 13260(d) of the California Water Code which requires that each person for whom waste discharge requirements have been prescribed pursuant to Water Code Section 13263 shall pay an annual fee according to a fee schedule established by the State Water Resources Control Board (State Board).
3. The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), may impose liability in accordance with California Water Code Section 13261 (a) and (b) for failure to pay annual fee assessed for the facility.
4. The following facts are the basis for the alleged violations in this matter:

Annual Fee Notice: On November 14, 2003, the State Board issued a notice of Annual Fee (Invoice No. 12790) to the discharger providing 30 days (December 14, 2003) for payment of the fiscal year 2003 – 04, beginning on July 1, 2003. The annual fee applicable to this facility is \$450.

Demand Letter: On January 22, 2004, the State Board issued a Past Due notice establishing the annual fee was more than 30 days past due.

Notice Of Violation: On February 26, 2004, the State Board issued a Notice of Violation, establishing the Annual fee was more than 90 days past due. The NOV is the final notice to the discharger that failure to pay required annual fees is a violation of the California Water Code Section 13261 and could subject the discharger to Administrative Civil Liability Complaint assessing monetary penalties.

5. While the annual fee has remained outstanding, the discharger continued to enjoy the privilege of discharging waste, while other dischargers paid the required annual fee. The liability should be calculated to negate any economic benefit realized by the discharger because of the violation.
6. As of April 23, 2004, the number of days San Marcos Tract 419 has been in violation for non-payment has been 131 days, tabulated as:

**December 14, 2003 to April 23, 2004 = 131 days of violations**

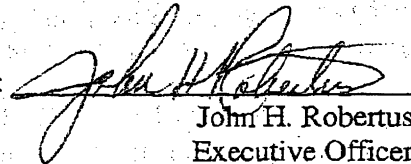
7. Pursuant to Water Code Section 13261(b), the maximum assessment San Marcos Tract 419 is civilly liable is \$1,000 for each day of violation for the violation cited above. The amount of liability will continue to accrue with the continued failure to pay the annual fee after the issuance of this complaint until the Regional Board considers this matter in a public hearing. Therefore, the maximum civil liability can range up to \$13,100.

**PROPOSED CIVIL LIABILITY**

8. Civil liability should be imposed on San Marcos 54 LLC by the Regional Board in the amount of \$1,310, calculated at \$10 per day times the number of days late or non-payment for the violations cited above. The proposed amount of civil liability attributed to each violation was determined by taking into consideration the factors specified in Section 13367, as well as the maximum civil liability that the Regional Board may assess.
9. Assessment of liability is a separate amount and does not include the amount of the annual storm water fee. Failure to pay the annual fee after the issuance of this complaint continues to accrue days of violation and is subject to additional assessment of liability until the Regional Board considers this matter in a public hearing. The current outstanding balance is \$450.
10. The Regional Board costs for investigating this incident were approximately \$400.

Dated April 23, 2004

By:

  
John H. Robertus  
Executive Officer

